

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MEIKA DESEAN BRITTON

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PLAINTIFF

v.

Civil No. 1:19cv840-HSO-JCG

JOE ERRINGTON, *et al.*

DEFENDANTS

**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION [31]; DENYING PLAINTIFF'S MOTION [24] TO
DEMONSTRATE THAT ADMINISTRATIVE REMEDIES WERE
EXHAUSTED; AND GRANTING IN PART AND DENYING IN PART
DEFENDANTS' MOTION [28] FOR PARTIAL SUMMARY JUDGMENT**

This matter comes before the Court on the Report and Recommendation [31] of United States Magistrate Judge John C. Gargiulo entered in this case on January 13, 2021, as well as the Motion [24] to Demonstrate that Administrative Remedies Were Exhausted filed by Plaintiff Meika DeSean Britton on May 18, 2020, and the Motion [28] for Partial Summary Judgment filed by Defendants on August 4, 2020.

Based upon a review of the record and relevant legal authority, the Magistrate Judge recommended that Plaintiff's Motion [24] be denied, that Defendants' Motion [28] for Partial Summary Judgment be granted in part and denied in part, and that the following of Plaintiff's claims be dismissed for failure to exhaust administrative remedies: (1) all of Plaintiff's claims against Defendants Daryl Baughn, Gia Nicole McLeod, Michelle Bulger, and Laura Tilley; (2) Plaintiff's failure-to-train claim against Defendant Joe Errington; and (3) Plaintiff's conditions-of-confinement claim concerning the lack of hot water and unsanitary

conditions. R. & R. [31] at 14.

The Court finds that the Report and Recommendation [31] should be adopted in its entirety as the finding of this Court, that Plaintiff's Motion [24] to Demonstrate that Administrative Remedies Were Exhausted should be denied, that Defendants' Motion [28] for Partial Summary Judgment should be granted in part and denied in part, and that Plaintiff's claims identified above should be dismissed for failure to exhaust.

I. BACKGROUND

Plaintiff Meika DeSean Britton ("Plaintiff"), proceeding *in forma pauperis*, filed a pro se Complaint [1] in this Court on November 8, 2019, followed by an Amended Complaint [17] on April 13, 2020. The Amended Complaint advances claims pursuant to 42 U.S.C. § 1983 against Defendants Joe Errington, Pelicia Hall, Daryl Baughn, Gia Nicole McLeod, Laura Tilley, Timothy Barnes, Georgia Shelby, Ashley Robinson, Michelle Bulger, Darlene Frost, Sarah James, and Jarita Bivens concerning Plaintiff's incarceration at South Mississippi Correctional Institution ("SMCI") in Leakesville, Mississippi. Compl. [1] at 1-15; Am. Compl. [17] at 1-5. The Court previously dismissed Plaintiff's claims against Defendants Frost and Bivens. See Order [9] at 1-7.

On May 5, 2020, the Magistrate Judge entered an Order [23] setting a deadline for motions based upon failure to exhaust administrative remedies. Plaintiff filed a Motion [24] to Demonstrate that Administrative Remedies Were Exhausted, and Defendants filed a Motion [28] for Partial Summary Judgment,

seeking dismissal of all of Plaintiff's claims against Defendants Hall, Errington, Baughn, and McLeod for failure to exhaust available administrative remedies. *See* Mot. [28] at 4-5. Defendants Robinson, Barnes, and Shelby requested summary judgment on Plaintiff's claims against them for retaliation, while Defendants Barnes and Shelby requested dismissal of Plaintiff's claim that they created an unsafe environment at SMCI by allowing lockdowns. *See id.* at 5. Plaintiff filed a Response [30] in opposition to Defendants' Motion [28].

On January 13, 2021, the Magistrate Judge entered his Report and Recommendation [31], recommending that Plaintiff's Motion [24] be denied, that Defendants' Motion [28] for Partial Summary Judgment be granted in part and denied in part, and that the following of Plaintiff's claims be dismissed for failure to exhaust administrative remedies: (1) all of Plaintiff's claims against Defendants Daryl Baughn, Gia Nicole McLeod, Michelle Bulger, and Laura Tilley; (2) Plaintiff's failure-to-train claim against Defendant Joe Errington; and (3) Plaintiff's conditions-of-confinement claim concerning the lack of hot water and unsanitary conditions. R. & R. [31] at 14.

The Report and Recommendation [31] was mailed to Plaintiff on January 13, 2021, at his address of record. Any objection to the Magistrate Judge's Report and Recommendation [65] was due within fourteen (14) days of service. L.U. Civ. R. 72(a)(3). To date, Plaintiff has not filed any objection to the Magistrate Judge's Report and Recommendation [31], and the time for doing so has passed.

II. DISCUSSION

Where no party has objected to a Magistrate Judge's report and recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. § 636(b)(1) ("a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made"). In such cases, the Court applies the "clearly erroneous, abuse of discretion and contrary to law" standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge's findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. The Court will adopt the Magistrate Judge's Report and Recommendation [31], and Plaintiff's Motion [24] to Demonstrate that Administrative Remedies Were Exhausted will be denied. Defendants' Motion [28] for Partial Summary Judgment be granted in part and denied in part, and the following of Plaintiff's claims will be dismissed for failure to exhaust administrative remedies: (1) all of Plaintiff's claims against Defendants Daryl Baughn, Gia Nicole McLeod, Michelle Bulger, and Laura Tilley; (2) Plaintiff's failure-to-train claim against Defendant Joe Errington; and (3) Plaintiff's conditions-of-confinement claim concerning the lack of hot water and unsanitary conditions.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [31] of United States Magistrate Judge John C. Gargiulo entered

in this case on January 13, 2021, is **ADOPTED** in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Plaintiff Meika DeSean Britton's Motion [24] to Demonstrate that Administrative Remedies Were Exhausted is **DENIED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Defendants' Motion [28] for Partial Summary Judgment is **GRANTED IN PART and DENIED IN PART**, and the following of Plaintiff's claims are **DISMISSED** for failure to exhaust administrative remedies: (1) all of Plaintiff's claims against Defendants Daryl Baughn, Gia Nicole McLeod, Michelle Bulger, and Laura Tilley; (2) Plaintiff's failure-to-train claim against Defendant Joe Errington; and (3) Plaintiff's conditions-of-confinement claim concerning the lack of hot water and unsanitary conditions.

SO ORDERED AND ADJUDGED, this the 10th day of February, 2021.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE